



**UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS**

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November 26, 2019

Dr. Janice Jackson  
Chief Executive Officer  
Chicago Public Schools District #299  
42 West Madison Street  
Chicago, Illinois 60602

*Sent via electronic mail only to: [CEDO-Jackson@cps.edu](mailto:CEDO-Jackson@cps.edu)*

Re: OCR Case #05-19-1388

Dear Dr. Jackson:

This is to advise you of the resolution of the above-referenced complaint filed against the Chicago Public Schools District #299 (District) with the U.S. Department of Education (Department), Office for Civil Rights (OCR). Specifically, the complaint alleged that the Boone Elementary School (School) discriminates on the basis of disability against persons with mobility impairments due to the lack of an accessible entrance.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104 and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131-12134, and its implementing regulation, 28 C.F.R. Part 35. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance from the Department. Title II prohibits discrimination on the basis of disability by certain public entities. As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to these laws.

During the investigation, OCR reviewed information provided by the Complainant and the District and conducted an on-site visit to the School. Based on this information, OCR determined that the District did not comply with Section 504 and Title II. The District has signed the enclosed Resolution Agreement (Agreement) to address the identified violation.

## **Legal Standards**

### **Accessibility – General**

The implementing regulations of Section 504 at 34 C.F.R. § 104.21 and of Title II at 28 C.F.R. § 35.149, provide that no qualified person with a disability shall, because a recipient's facilities are inaccessible to or unusable by individuals with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity.

### **Accessibility – Existing Facilities (Program Access)**

The implementing regulations of Section 504, at 34 C.F.R. 104.22, and Title II, at 28 C.F.R. 35.150, are applicable to any facility or part of a facility where construction was commenced

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prior to June 3, 1977 (Section 504) or January 26, 1992 (Title II), respectively. The Section 504 regulation, at 34 C.F.R. 104.22(a) and the Title II regulation, at 28 C.F.R. 35.150(a), provide that with such facilities, termed “Existing Facilities,” the recipient will operate the programs and activities so that, when viewed in its entirety, each such program or activity is readily accessible to and usable by persons with disabilities. Another way to refer to this standard is as providing program access. The District may comply with this requirement through the reassignment of classes and activities to accessible buildings, alteration of existing facilities, or any other methods that result in making each of its programs and activities accessible to persons with disabilities. The District is not required to make structural changes in existing facilities where other methods are effective in achieving compliance.

#### **Accessibility – New Construction**

The implementing regulation of Section 504, at 34 C.F.R. §104.23, and Title II, at 28 C.F.R. 35.151, are applicable to any facility or part of a facility where construction commenced after June 3, 1977 (Section 504), or January 26, 1992 (Title II), respectively. Such facilities or the newly-constructed portions thereof are termed “new construction.” The regulations provide that each facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by persons with a disability. The Section 504 regulation, in effect and applicable for facilities constructed or altered on or after January 18, 1991, at 34 C.F.R. 104.23(c), delineated the Uniform Federal Accessibility Standards (UFAS) as a minimum standard for determining accessibility. The Title II regulation, at 28 C.F.R. 35.151 (c), delineated UFAS or the Americans with Disabilities Act Accessibility Guidelines for Building and Facilities (ADAAG) as a minimum standard for determining accessibility for facilities constructed or altered on or after January 26, 1992. Under the regulations, departures are allowed from particular requirements of the standards when it is clearly evident that equivalent access is provided. Under Title II, a recipient may select UFAS or ADAAG as a compliance standard. Under Section 504, ADAAG may be utilized as a standard that provides equivalent access.

The regulation implementing Title II and the ADAAG standards were amended in September 2010. Title II adopted new accessibility guidelines, 2010 ADA Standards for Accessible Design (ADA Standards), which became effective March 15, 2011. 28 C.F.R. §35.151(c)(3) now provides, “If physical construction or alterations commence on or after March 15, 2012, then new construction and alterations subject to this section shall comply with the 2010 Standards.” OCR Notice of Interpretation, Federal Register, Vol. 77, No. 50, pages 14972-14976 (March 14, 2012), allows use of the ADA Standards under Section 504.

OCR utilizes the UFAS or ADDAG standards as a guideline to assess if an element of an existing facility is accessible.

#### **Background Information**

The School enrolls students from kindergarten through eighth grade and was constructed in 1928. One addition was built during the 1950s. A wing that houses the cafeteria (and also serves as a “multi-purpose” room) was added to the building in the 1990s. Based on the construction

date, the original portion of the School is an existing facility, and the program access standard applies. The cafeteria addition, which was constructed after 1977, is considered new construction.

The District informed OCR that the School has one accessible entrance, “Door 5,” which is the exterior entrance to the cafeteria. Door 5 does not have the universal sign for accessibility designating it as the School’s accessible entrance. Door 5 is connected by a 43” wide concrete sidewalk to the parking lot designated by signage for use by faculty and staff only from 7:00am-6:00pm. Visitors must park on a public street.

According to the Principal, Door 5 is locked throughout the school day. She said that if a visitor wanted to use this accessible entrance, then he/she would need to call the front office who would then send someone to open the door. OCR observed that there is not a doorbell, camera, or phone at Door 5 for visitors to use to communicate with the school office.

There are eight other exterior entrances to the building. Stairs exist in front of each of the eight doors. There are seven stairs at the main entrance, 2 from the sidewalk to the walkway and 5 additional stairs to get to the main doors. None of these entrances includes signage that directs a person with a mobility impairment to Door 5. All visitors must sign in at the front office, which is directly inside the main entrance.

The District asserted the School’s student population included one student with a mobility impairment during the 2018-2019 school year. The Complainant XXXXXXXXXXXXXXXX and told OCR that in the past has XXXXXXXXXXXXXXXX the stairs at the main entrance. The Complainant also told OCR she did not know the School had designated Door 5 as its accessible entrance.

#### School Policies and Procedures

The School’s website (<https://www.boone.cps.edu>) does not inform parents/guardians or visitors with a mobility impairment how to request access to programs and activities or that Door 5 is the School’s designated accessible entrance.

#### Facts

ADAAG at 4.30.7 requires facilities to use the International Symbol of Accessibility (ISA). As noted above, the School lacks exterior signage designating Door 5 as the accessible entrance. Door 5 has two identical doors with handles at a height of 30½” to 36½”. The doors’ width is 33” and the threshold is ¼”. Once inside the exterior doors there is a second set of doors that have an approach of 9’ x 10’. The interior doors have a handle that is 29½” to 36½” high, are 33” wide, and have a tension of 17 pound-force. ADAAG Section 4.13.11(b) requires that the maximum force for pushing or pulling open an interior hinged door shall be 5 pound-force. Visitors who enter through Door 5 must sign in at the front office. To exit the cafeteria there is a 25’ ramp that has a slope of 10.7 degrees. ADAAG, at 4.8.2, provides the maximum slope must not be greater than 4.76 degrees. The ramp’s handrails are 33” high, 3” from the wall, and 1½” wide. ADAAG at 4.8.5(5) requires that ramp runs have a handrail, the top of which shall be

mounted between 34” and 38” above the ramp surface. ADAAG at 4.26.2 requires that the space between the wall and the grab bar shall be 1½”.

At the top of the ramp is a set of two identical doors that are 31” wide, have handles that have a height of 29½” to 36½”, and have a tension of 16 pounds. ADAAG at 4.13.5 requires a minimum clearance of 32”. After passing through this door, a visitor is in the portion of the School that was constructed in 1928. The hallway leading to the front office is flat.

### **Analysis and Conclusion**

ADAAG, at 4.14.1, requires that an entrance required to be accessible shall be part of an accessible route complying with 4.3.

The sole entrance designated as accessible for adult visitors is not accessible to individuals with a mobility impairment because of the lack of ISA and the force required to open an interior door. The School also lacks an accessible path of travel for individuals visiting the School to sign in at the front office. Specifically, the ramp slope to leave the cafeteria as well as the handrail and door clearance space do not comply with the ADAAG requirements at 4.8 and 4.26.

Based on the foregoing, OCR has determined that the District and School have failed to provide an entrance and path of travel that are accessible to individuals with mobility impairments, in violation of the implementing regulation of Section 504, at 34 C.F.R. 104.22, and at 34 C.F.R. §104.23, and Title II, at 28 C.F.R. 35.150 and 28 C.F.R. 35.151.

The District signed the enclosed Agreement, which, when fully implemented, will fully resolve the compliance issue raised by the complaint. The provisions of the Agreement are aligned with the compliance issue and the information obtained during OCR’s investigation and are consistent with the applicable regulations. Pursuant to the Agreement, the District will provide written instructions to the Complainant that explain how the School will ensure that she has program access with respect to the allegation that gave rise to this complaint until the District provides one entrance at the School that is accessible to visitors with mobility impairments. Additionally, by December 31, 2019, the District will submit to OCR for approval a plan to ensure that at least one entrance at the School, when viewed in its entirety, is readily accessible and usable by visitors with mobility impairments. In its plan, the District will ensure that the School provides an accessible route to the designated accessible entrance along with signage. The School’s non-accessible entrances will have directional signage installed to provide information to the public about which entrance is accessible. Any modifications or renovations to facilities at the School, such as the construction of an accessible entrance, will comply with the ADA Standards. Following approval of the plan by OCR, the District will complete construction of the accessible entrance by no later than September 1, 2020.

OCR will monitor the implementation of the Agreement and looks forward to receiving the District’s first monitoring submission by December 9, 2019.

This concludes OCR's investigation of the complaint and should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

The Complainant may file a private suit in federal court, whether or not OCR finds a violation.

OCR thanks you and your staff, especially XXXXXXXXXXXX for the cooperation extended to OCR. If you have any questions regarding this matter, please do not hesitate to contact Mark Erickson of my staff at 312-730-1574 or by email at mark.erickson@ed.gov.

Sincerely,

Aleeza Strubel  
Supervisory Attorney

Enclosure

cc: XXXXXXXXXXXX  
XXXXXXXXXXXX  
XXXXXXXXXXXX  
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